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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/594,036	09/25/2006	Toru Suzuki	Q97091	8071
23373 7590 10/16/2009 SUGHRUE MION, PLLC 2100 PENNSYLVANIA AVENUE, N.W. SUITE 800 WASHINGTON, DC 20037			EXAMINER POLO, GUSTAVO D	
			ART UNIT 2627	PAPER NUMBER
			MAIL DATE 10/16/2009	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/594,036

**Applicant(s)**

SUZUKI ET AL.

**Examiner**

Gustavo Polo

**Art Unit**

2627

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 31 July 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-3 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 2 is/are rejected.
- 7) ☒ Claim(s) 3 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SE/US)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### DETAILED ACTION

In the amendment filed on 31 July 2009, claims 1-3 have been amended and claim 4 has been cancelled.

#### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

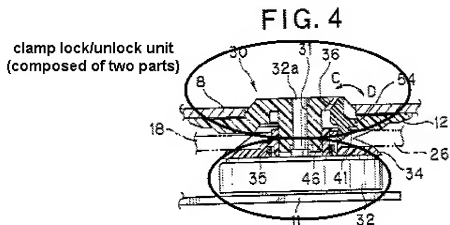
A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 2 are rejected under 35 U.S.C. 102(b) as being anticipated by Konno et al. Pub. No. US 2002/0176352 A1 (herein, Konno).

As per claim 1, Konno discloses a main body (Fig. 1, 11); a clamp unit (Fig. 3, element 30 including 18 & 26) clamping a recording medium to be received in the main body (¶ 15, ll. 4-7) and rotating the recording medium (¶ 17, l. 4); a movable frame supporting the clamp unit (movable member, Figs. 3 & 4, 34); a lock unit (spring, Fig. 3, 35) movable between a lock position (as shown generally in Fig. 3 where spring is not compressed), in which the movable frame is locked to the main body (where movable member 34 is not moving with respect to 11 and also locked by 36), and an unlock position (as shown generally in Fig. 4 where spring is compressed), in which the movable frame is made movable against the main body (where movable frame is moving by means of spring 35 with respect to body 11 as shown in Figs. 3 and 4); and a clamp lock/unlock unit limiting to unlock clamping by the clamp unit when the lock unit is positioned in the unlock position (Fig. 4, where 18 & 26 are limiting), and allowing to

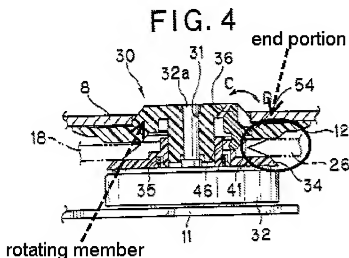
unlock clamping by the clamp unit when the lock unit is positioned in the lock position (Fig. 3, where 18 & 26 are allowing unlocking),



wherein the clamp unit comprises: a turntable (Fig. 4, 12) positioning the recording medium (disk, 8) on a surface thereof (¶ 15, II. 4-8), and clamping the recording medium positioned on the surface (Fig. 3), and rotating together with the recording medium (¶ 17, I. 4); and a pick-up unit (Fig. 1, 13) provided to move freely between an unclamp position (where operating member 18 moves between clamp and unclamp position), in which clamping the recording medium on the turntable is unlocked (Fig. 4), and a playback position, in which the recording medium is clamped on the turntable and information on the recording medium is played back (Fig. 3), wherein the clamp lock/unlock unit limits the pick-up unit to move to the unclamp position when the lock unit is positioned in the unlock position (as shown in Fig. 4, the operating member of pick-up is limited by clamp lock/unlock unit), and allows the pick-up unit to move to the unclamp position when the lock unit is positioned in the lock position (as shown in

Figs. 1 and 3, the operating member of pick-up is allowed to move unlimited by clamp lock/unlock unit).

As per claim 2, Konno discloses a cutout cut from an end of the pick-up unit, close to the turntable, to an inner edge of the pick-up unit (Fig. 1, 18, for instance); and a rotating member provided rotatably on the main body to move one end portion of the rotating member (see below)



between a position, in which the one end portion is located inside the cutout of the pick-up unit positioned in the playback position (cutout penetrated as shown in Fig. 4), and another position, in which the one end portion is located outside the cutout of the pick-up unit positioned in the playback position (as shown in Fig. 3 where end portion moves up and out of cutout), the rotating member being biased so as to move the one end portion thereof toward the turntable (Fig. 1 where when rotating member is biased by 18 end portion moves towards turntable), wherein the one end portion of the rotating member penetrates into the cutout of the pick-up unit positioned in the playback

position when the lock unit is positioned in the unlock position (as shown generally in Fig. 4), and another end portion (refers to part of element 34 which penetrates element 26) of the rotating member is pushed by the lock unit (35) in a direction such that the one end portion moves out of the cutout (Fig. 3, 18), and the one end portion of the rotating member moves out of the cutout of the pick-up unit positioned in the playback position (as shown generally in Fig. 3).

Claim 2 is considered a product-by-process claim, specifically, the limitation "a cutout cut from an end of the pick-up unit." "[E]ven though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process." See MPEP 2113.

#### ***Allowable Subject Matter***

Claim 3 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Response to Arguments***

Applicant's arguments filed on 31 July 2009 have been fully considered but they are not fully persuasive. The rejection with respect to claims 1 and 2 is maintained and is hereby made final.

Addressing preliminary matters first, the objection to the title and to claim 3 (for grammatical reasons) has been overcome by the instant amendment. Those objections are withdrawn. However, a new objection has been found for claim 3. For details, please see above.

As per the rejections under 35 U.S.C. 112, second paragraph, the instant amendment provides for antecedent basis for the "end portion" limitation of claim 2 and therefore that rejection is withdrawn. As per claim 3, the term "close to" which the examiner had asserted rendered the scope of the claim unascertainable has been changed to "toward." Therefore, that rejection is withdrawn.

The rejections of claims 1 and 2 as anticipated by Konno are maintained. The Applicant disagrees that Konno discloses the main body of the claimed invention. For sake of clarity the element has been labeled as 11 as shown in Fig. 1. For details, please refer to the rejection of claim 1. The Applicant also argues that the spring of Konno is not movable between a lock/unlock position and a movable frame not moving with respect to the body. However, the examiner is unclear as to Applicant's argument of these limitations. As Fig. 3 of Konno shows, the movable frame is locked, i.e., its movement is limited with respect to the body 11. In Fig. 4, which represents the "unlocked" position, the frame slides down and its movement is not limited as opposed to Fig. 3. Applicant further asserts that elements 18 and 26 disclosed in Konno do not limit the unlock/lock unit as defined. Those elements function to limit the structure to one of two final states -- locked (Fig. 3) and unlocked (Fig. 4). All other limitations,

including the newly added one, are anticipated by Konno. For further details, please refer to rejection above.

As per claim 2, the examiner would like to point out that the cut-out feature of claim 2 is a product-by-process limitation. A suggestion is to amend the claim to "a cutout formed at an end of the pick-up." The examiner would also like to note that Applicant has added several limitations in the current amendment both to claim 1 and 2 which have changed the scope of the claims. However, these limitations have not distinguished the claimed invention from Konno but have caused some adjustments to the rejection. Therefore, Applicant's argument concerning the movable member in claim 2 is now considered moot. For details, please refer to the rejection above.

With the claims as currently presented, as per claim 3, the examiner agrees that Konno does not disclose wherein the other end portion of the rotating member is provided with a second insert portion to penetrate between the turntable and the movable member ***when the pick-up unit moves from the playback position to the unclamp position.*** (Emphasis added). Therefore, as presented, claim 3 would be allowable if all limitations of claim 1 and 2 were incorporated into claim 3. The rejection of claim 3 is withdrawn and objected to as being dependent on a rejected claim.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within



TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gustavo Polo whose telephone number is 571-270-7613. The examiner can normally be reached on Monday-Friday 7:30AM-5:00PM EST (Alternate Fridays Off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrea Wellington can be reached on 571-272-4483. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/G. P./  
Examiner, Art Unit 2627

/Andrea L Wellington/  
Supervisory Patent Examiner, Art  
Unit 2627